

E-Filed 01/23/2008

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

VICKI R. SEIDEL,

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

Case Number C 07-3141 JF

**ORDER¹ DENYING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
DEMAND FOR JURY TRIAL**

[re: docket no. 39]

Plaintiff Vicki R. Seidel moves for leave to file a belated demand for jury trial. Plaintiff filed the complaint in this action on June 14, 2007, seeking to enjoin the Government from levying against her assets to satisfy a tax debt owed by her husband Thomas Seidel arising from his failure to pay payroll taxes. The complaint did not contain a demand for jury trial. On June 18, 2007, this Court concluded that the instant action is related to a pending criminal action for tax evasion and related offenses entitled *United States v. Seidel*, CR 06-0539 JF. Plaintiff requests leave to demand a jury trial because the related criminal case will involve a jury trial. Plaintiff asserts that the two cases involve common issues of law and fact, and that it is expected

¹ This disposition is not designated for publication and may not be cited.

1 that the cases may be consolidated for motion hearings, trial or both.

2 The Government opposes the motion. The Government asserts that it filed its answer in
 3 this case on July 12, 2007. The Government did not file a counterclaim, and it did not make a
 4 demand for a jury. Accordingly, pursuant to Fed. R. Civ. P. 38(d), Plaintiff's motion is untimely.
 5 The Government also argues that Plaintiff is not entitled to a jury trial because the Seventh
 6 Amendment right to jury trial does not apply in actions against the United States.

7 A party waives a jury trial unless its demand for jury trial is properly served and filed.
 8 Fed. R. Civ. P. 38(d). "Any party may demand a trial by jury of any issue triable of right by a
 9 jury by (1) serving upon the other parties a demand therefor in writing at any time after the
 10 commencement of the action and no later than 10 days after the service of the last pleading
 11 directed to such issue . . ." *Id.* The last pleading in the present case was the Government's
 12 answer which was filed and served on July 12, 2007. Thus, Plaintiff was required to serve a
 13 demand for jury trial in writing on the government on or before July 22, 2007. Plaintiff's failure
 14 to serve and file a demand as required by Fed. R. Civ. P. 38(d) constitutes a waiver by her of trial
 15 by jury, and Plaintiff has not shown good cause for excusing this requirement. Accordingly,
 16 Plaintiff's motion for leave to file demand for jury trial will be DENIED.²

17
 18 IT IS SO ORDERED.

19
 20 DATED: January 23, 2008



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 22
 23 JEREMY FOGEL
 24 United States District Judge
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 26

27 ² Although the Court need not address the Government's Seventh Amendment argument,
 28 that argument appears to be correct. Further, there is no procedure under the Court's rules for
 consolidating a civil case with a criminal case.

1 This Order has been served upon the following persons:

2 Robert Alan Jones rajltd@aol.com, jean@rajlv.com

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